

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

February 28, 2014

- I. **ATTENDANCE** - The Vice-Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, February 28, 2014. Members present were Vice-Chair Kathryn Moore, Joseph Smith; Janice Meyer; James Griggs, and Noel White. Absent were: Chairman Barry Stumbo and Thomas Glover. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Sallee, Barbara Rackers, and Tammye McMullen.
 - II. **APPROVAL OF MINUTES** - The Vice-Chair announced there were no minutes to be considered at this time.

Swearing of Witnesses – Prior to sounding the agenda, the Vice-Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.
 - III. **PUBLIC HEARING ON ZONING APPEALS**
 - A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Vice-Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.
 1. **Postponement or Withdrawal of any Scheduled Business Item** - The Vice-Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
 - a. **C-2014-10: LEXINGTON FRIENDS MEETING** – a request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. (Council District 1).

The Staff Recommends: Approval, for the following reasons:
 1. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an institutional/church use has occupied this property for approximately 60 years, and the Lexington Friends Meeting has successfully operated at this location since 2001. The expansion of the use to allow a day care center during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community. Furthermore, adequate parking will be available on site, and the church intends to significantly increase the amount of green space behind the church.
 2. All necessary public facilities and services are available and adequate for the proposed expansion.
This recommendation of approval is made subject to the following conditions:
 1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to the drop-off area and parking lot design during the normal permitting process, subject to the review and approval of the Divisions of Planning, Building Inspection, Traffic Engineering, and Engineering.
 2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
 3. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
 4. The applicant shall maintain and/or replace the parking lot perimeter landscaping and buffering, including but not limited to the vegetative buffers along the street frontages and the fencing where adjoining the neighboring residential properties. Landscaping and buffering shall meet the requirements of Article 18, except where specifically varied by the Board of Adjustment in cases CV-90-129 & CV-94-51.
- Representation** – Ms. Chris Westover was present representing the appellant, and she indicated that she wanted to request a three - month postponement. She said that Lexington Friends have been meeting with the neighbors and wanted to work things out, and it would take more time. The postponement would be for the May 30th meeting.

Action - Vice-Chair Moore asked the opposition if they objected. They replied in the negative.— A motion was made by Mr. Griggs, seconded by Ms. White; and carried unanimously (Stumbo and Glover absent) to **postpone C-2014-10: LEXINGTON FRIENDS MEETING** - request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Ave. (Council District 1).

2. No Discussion Items - The Vice-Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- B. Transcript or Witnesses - The Vice-Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. Variance Appeals - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

- D. Conditional Use Appeals
(Sounded Items)

1. **C-2014-9: TRANSYLVANIA UNIVERSITY** – a request for a conditional use permit to construct dormitories and parking accessory to a school for academic instruction in a High Density Apartment (R-4) zone at 333 & 345 N. Broadway and 456 W. Fourth Street; and in a High Density Apartment (R-4)/Historic District Overlay (H-1) zone at 331 N. Broadway. (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as this site can accommodate the proposed dormitories as vital accessory uses to the University. Parking is available and adequate and has not proven to be a problem to the immediate neighborhood in the past, as the University owns and manages about 4 times the required parking on their campus. The University will enhance the existing screening from the surrounding neighborhood by providing a 6' tall privacy fence adjacent to their residential neighbors, while retaining the existing trees that are within the shared property line(s).
- b. The additional dormitory rooms are necessary to the University, as nearly 75% of their total student population lives on campus. Granting the approval will help Transylvania University to achieve the goal for enrollment that is envisioned in their strategic plan.
- c. All necessary public facilities and services are available and adequate for the proposed use, including police and fire protection.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications, if necessary, during the normal permitting process. This will be subject to the review and approval of the Divisions of Historic Preservation, Planning, Building Inspection, Traffic Engineering, and Engineering, as necessary. It is understood that Board approval is required for (but

- not limited to) any additional buildings or an increase in the total gross floor area.
2. All applicable permits, including Building Permits, Fence Permit(s), Zoning Compliance Permits, and Certificates of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
3. The applicant is allowed up to three years to exercise this conditional use permit, with the ability to phase construction for the expected build-out to occur over a period of time for additional five years.
4. The 6' solid wood privacy fence shall be installed in its entirety where adjacent to residential properties with the first phase of development. Repair and or replacement of the fence will be re-assessed with each phase of development.
5. Any construction on the property at 331. N. Broadway will be subject to review & approval by the Board of Architectural Review.

Representation – Ms. Chris Westover, attorney, was present representing appellant. She indicated that they had reviewed the recommended conditions and agreed to abide by them with, one slight change that they have discussed with the Planning staff regarding the timing. She said that in the one condition; where it says to exercise the permit within three years and have full build - out in five years, they would request to have full build - out after the three years for up to seven years. In other words, they would have ten years from start to finish. She said that she has spoken with staff and they were agreeable, to that change. Mr. Sallee stated that Ms. Westover was correct in her information.

Mr. Sallee then stated that there was a typo in condition #1 and put the corrections on the overhead for the Board. Condition #1, 3rd sentence, should read: "It is understood..."

Citizen Comment – Ms. Patti Scott, 325 North Broadway, was present. Ms. Scott stated that she and her husband have lived in the area for 40 years. She said they have been involved in many of Transylvania's projects; with mixed results. She stated that they are not opposed to the dorms at all, but they do have some concerns about their previous experience; they were concerned about the height of the buildings; how close to their property line they will be (she thinks they are going to be about 50 feet from their garage, which is very close to their back yard as well); the outdoor lighting (which was discussed with her the day of the hearing); and the construction hours. She went on to say that when the Beck Center across Broadway was being built, the workers started sometime before daylight and worked until after dark; one time they started at 3:00 a.m. This is a concern of theirs because it will be so close to their back yard. Ms. Scott said that they would like some restriction on the work hours and maybe have weekends free. She said that she was told about the chain link fence, adding that she forgot to mention the cooling and heating system for this. She noted that there is a cooling tower (as shown on the exhibits) that is 50 feet from their back yard; they have had a noise problem with this since 1989 when it was put in.

Vice-Chair Moore asked if Ms. Scott was requesting changes in the conditions. Ms. Scott said no; those are just their concerns that they would like everyone to be made aware of. Vice-Chair Moore then asked if Ms. Scott was comfortable if the Board approved it as is. Ms. Scott replied affirmatively.

Ms. Westover said that the heating and cooling towers are not going to be changed with this application, and the application will not in any way affect those towers. She said that in terms of the construction noise, there is a noise ordinance. There are limits on that sort of activity, and certainly Transylvania University would follow the noise ordinance. She said that any time the neighbors have had any kind of question or problem about it over the last several years, the university has been very good at responding to citizens' concerns, and noted that there will be means put in place to provide those kinds of protection.

Mr. Griggs asked Ms. Westover if there was much out reach to the neighborhood when this was in the initial planning stages, and if they had contacted these neighbors to let them know that the dorms were being considered before the architect was too far along. Ms. Westover said there had been meetings, at least two Northside Neighborhood Association meetings, and there has been out reach and a dialogue with the neighbors. She also said that she believed that the Scotts and Transylvania are frequently in touch and communicate on a regular basis.

Mr. Griggs then said this building being five stories shouldn't have been a surprise that Ms. Scott just discovered in the last couple of weeks; since the notification of the hearing. He asked if everyone understood it was going to be four stories. Ms. Westover replied affirmatively.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Stumbo and Glover absent) to **approve C-2014-9: TRANSYLVANIA UNIVERSITY** - request for a conditional use permit to construct dormitories and parking accessory to a school for academic instruction in a High Density Apartment (R-4) zone at 333 & 345 N. Broadway and 456 W. Fourth Street; and in a High Density

Apartment (R-4)/Historic District Overlay (H-1) zone at 331 N. Broadway (Council District 1), based on staff's recommendation of approval and subject to the five conditions, noting the small typo in condition one, and the change in number of years as posted in this hearing; (that was condition three).

E. **Administrative Review** – There were none

- IV. **BOARD ITEMS** - The Vice-Chair announced that any items a Board member wished to present would be heard at this time. None were presented.
- V. **STAFF ITEMS** - The Vice-Chair announced that any items a Staff member wished to present would be heard at this time. None were presented.
- VI. **NEXT MEETING DATE** - The Vice-Chair announced that the next meeting date would be March 28, 2014.
- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 1:44 p.m.

Kathryn Moore, Vice-Chair

James Griggs, Secretary